

# MW ANALYTICS

Energy & Utility Consulting

Bradley G. Mullins  
Principal Consultant

Vihiluoto 15  
FI-90440, Kempele Finland  
+1 (503) 841-1465  
brmullins@mwanalytics.com

September 10, 2021

Mark L. Johnson  
Executive Director and Secretary  
Washington Utilities and Transportation Commission  
P.O. Box 47250  
Olympia, WA 98504-7250

Re: Washington Utilities and Transportation Commission v. Puget Sound Energy, Dockets UE-190529, UG-190530 et al.

Notice of Intent to Amend Final Orders; Notice of Intent to Consolidate Dockets, and Notice of Opportunity to File Written Response (August 10, 2021),

**Response Comments on Behalf of the Alliance of Western Energy Consumers.**

Dear Executive Director and Secretary Johnson:

The Alliance of Western Energy Consumers (“AWEC”) appreciates this opportunity to provide comments on the Commission’s August 10, 2021 Notice of Intent to Amend Final Orders in these consolidated matters, including responses to the August 27, 2021 Response Comments of Puget Sound Energy (“PSE”).

## **I. Introduction**

On July 8, 2020, the Commission issued Final Orders 08/05/03 (hereinafter “Order 08”) in the matters consolidated under Docket No. UE-190529, the 2019 General Rate Case (“GRC”) of Puget Sound Energy (“PSE”).<sup>1/</sup> Following the issuance of Order 08, PSE sought judicial review of the Commission’s calculation of protected-plus Excess Deferred Income Tax (“EDIT”) amortization. Later, PSE voluntarily dismissed that action upon the Commission’s representation that it would revisit its order if PSE requested and obtained a private letter ruling from the Internal Revenue Service (“IRS”) and submitted an accounting petition to track the revenues in the event that the outcome of the private letter ruling was inconsistent with the Commission’s decision on protected-plus EDIT in Order 08. On July 26, 2021, the IRS issued Private Letter Ruling 101961-21 (the “PLR”) in response to PSE’s request.

---

<sup>1/</sup> WUTC v. PSE, Dockets UE-190529 Cons., Final Order 08/05/03, Rejecting Tariff Sheets; Authorizing and Requiring Compliance Filing (“July 8, 2020”) (“Order 08”)

Given that this docket is no longer a contested proceeding, AWEC has not had the opportunity to review PSE's letter to the IRS where PSE requested the issuance of the PLR. Notwithstanding, the PLR states that PSE requested a ruling on the following specific items:

- (1) Whether the Normalization Rules of § 168(i)(9), former § 167(1), and § 13001 (d) of the Tax Cuts and Jobs Act ("TCJA") permit Taxpayer to adjust its EDIT ARAM amortization based on the test year to the EDIT ARAM amortization based on one or more subsequent years without making similar adjustments to rate base, ADIT, book depreciation expense, and tax expense;
- (2) Whether the Normalization Rules of § 168(i)(9), former § 167(1), and section 13001(d) of the TCJA permit Taxpayer to adjust its EDIT ARAM amortization annually without making similar adjustments to rate base, ADIT, book depreciation expense, and tax expense;
- (3) Whether the Normalization Rules of § 168(i)(9), former § 167(1), and section 13001(d) of the TCJA permit Taxpayer to provide a true-up to EDIT ARAM amortization in the year following the rate year based on volume variances between the test year and the rate year without making similar adjustments to rate base, ADIT, book depreciation expense, and tax expense; and,
- (4) Additionally, Taxpayer asks that if we determine that any of the requirements described of Order are not consistent with the Normalization Rules of § 168(i)(9), former § 167(1), and section 13001 (d) of the TCJA, Taxpayer requests that we provide in the ruling that Taxpayer will not be considered to be in violation of the normalization rules if it follows the corrective actions described in its letter.<sup>2/</sup>

In its private ruling, the IRS held that, in each of the narrowly crafted circumstances identified in requests (1) through (3), the normalization rules would affirmatively be violated.<sup>3/</sup> Further, the IRS held in response to request (4) that, if the corrective actions described in PSE's letter request were followed, the Company would not be considered to be in violation of the normalization requirements.<sup>4/</sup>

PSE chose the wording of the PLR requests. Unfortunately, the requests themselves do not correspond to the Commission's revenue requirement policy, which relies on a "modified" or "hybrid" test year, not a strict historical test year as the requests imply. The wording of the requests, therefore, makes it challenging to apply the PLR conclusions to the rate case results approved in PSE's 2019 GRC.

---

<sup>2/</sup> PLR at 6.

<sup>3/</sup> Id. at 6-9.

<sup>4/</sup> Id. at 10.

Further, it is important to recognize that, based the wording of the request (4), the IRS did not conclude that the corrective actions PSE proposed were the only corrective actions that would cure a potential normalization violation. Those were just the only corrective actions with which the IRS was presented in the PLR request PSE drafted.

Notwithstanding these shortcomings with the PLR, AWEC has several recommendations for the Commission to consider that would ensure full compliance with the standards the IRS articulated in the PLR, as discussed below.

As a threshold matter, however, it is difficult to parse one particular issue from a comprehensive order, such as Order 08, when the reasonableness of the end result was considered in the context of the entirety of all of the decisions in the order. Had the Commission made a different decision with respect to protected-plus EDIT, it may have come to a different conclusion on other revenue requirement items in order to arrive at a reasonable end result. Additionally, had parties had the benefit of the PLR at the time that the 2019 GRC was litigated, they may have made different recommendations to arrive at an end result which each party found to be reasonable. Thus, it is appropriate for the Commission to evaluate Order 08 in a holistic manner when incorporating the PLR conclusions into its amended decision.

## **II. The PLR Is Premised on the Commission Using a Strict Historical Test Period, and Therefore, the Specific Rulings It Reaches Are Not Necessarily Applicable to Order 08.**

It is well known that the Commission does not use a strict historical test period. The Commission uses a modified or hybrid test period, which includes pro forma and known and measurable adjustments, consistent with longstanding policies and practices.<sup>5/</sup> The Commission has repeatedly reaffirmed this distinction, stating for example, “Although [Washington is] often recognized as a historic test year state, it is more accurate to say that the Commission relies on a ‘modified’ or ‘hybrid’ test year.”<sup>6/</sup>

Notwithstanding, the rulings in the PLR are based on the faulty premise that the Commission uses a strict historical test period with no restating or pro forma adjustments beyond the end of the historical test period.

For example, each of PSE’s PLR requests (1) through (3) contain the clause “without making *similar adjustments* to rate base, ADIT, book depreciation expense, and tax expense.” Based on that wording, the IRS concludes that an adjustment to protected-plus EDIT violates the normalization requirements unless *similar adjustments* are made to these other revenue requirement items. With respect to making a post-test period adjustment to protected-plus EDIT, this language implies that the Commission does not make other *similar* post-test period adjustments. The revenue requirement approved in Order 08, however, did include many restating and post-test period adjustments when arriving at revenue requirement. Whether those

---

<sup>5/</sup> WUTC v. Pacific Power & Light Co., Docket UE-140762 et al., Order 08 ¶ 20 (Mar. 25, 2015).

<sup>6/</sup> Id.

adjustments are “similar” may be subject to debate. Notwithstanding, the IRS conclusion did not consider those restating and post-test period adjustments.

When describing Order 08, for example, the PLR states that the “Order includes Taxpayer’s depreciation expenses, tax expenses, ADIT (including EDIT) and rate base for the test year in the computation of the primary cost of service and base rate.”<sup>7/</sup> That statement, however, is not true. The depreciation expenses, tax expenses, ADIT (including protected-plus EDIT) and rate base used to establish cost of service in the 2019 GRC were not based solely on the test year results. Each of these items was adjusted to an End-of-Period (“EOP”) basis and again further into the pro forma period through the application of pro forma capital and other post-test year adjustments.

The PLR then criticizes the Commission’s approach to protected-plus EDIT stating that “No other similar adjustments are made for depreciation expense, income tax expense, ADIT (including EDIT), or rate base, which were, instead, based on the historical test period (again, not including pro forma adjustments which are not a topic of this PLR).”<sup>8/</sup> As acknowledged in the parenthetical, this statement is only true if one ignores restating and pro forma adjustments, and assumes that no such adjustments were made in the context of the revenue requirement approved in Order 08. The Commission, however, did approve many adjustments to the test period results to “reflect actual rate base values and revenue requirement more closely during the rate effective period.”<sup>9/</sup> Thus, the IRS assumption that revenue requirement was based on a strict historical test period is invalid. In fact, as discussed below, the only revenue requirement item that was not adjusted for the pro forma period in PSE’s filing was protected-plus EDIT, leading to its own set of consistency issues.

That said, the faulty premise and the ambiguity in the PLR does not necessarily mean that the conclusions reached in the PLR are invalid. It simply means that the application of those conclusions to Order 08 is uncertain. This puts ratepayers and the Commission in a tricky situation, where the best we can do is form a solution that complies with the standards articulated by the IRS. That does not mean, however, that PSE’s solution is the only way to meet those standards; it was just the only solution the IRS was asked to rule on.

A private letter ruling is hardly a fair way to adjudicate such a critical issue to ratepayers. Unlike the Commission, the IRS is not subject to any evidentiary standard when making its ruling. Intervenors are not provided with the opportunity to rebut factual assertions in a request. No hearing is held on such issues. There is no opportunity for rehearing or appeal. It is not clear what information other than the information supplied by PSE, if any, the IRS considered when forming its decisions on the narrowly crafted issues identified in the PLR request. It is clear however, that the IRS was unaware of Washington’s use of a hybrid test period. Thus, while it is important for the Commission to adhere to the IRS guidelines, the private letter ruling process

---

<sup>7/</sup> PLR at 4 (emphasis added).

<sup>8/</sup> PLR at 5 (emphasis added).

<sup>9/</sup> Order 08 at 2.

should not supplant the rigorous ratemaking processes and procedures used to establish rates that satisfy Washington State law and that are “just, fair, reasonable and sufficient.”<sup>10/</sup>

AWEC’s position is that it is likely that Order 08 was not in compliance with the normalization requirements and that it is necessary to amend Order 08. A protected-plus EDIT revenue tracking mechanism, for example, is clearly inconsistent with the PLR. Amending Order 08, however, cannot be done by solely considering the EDIT adjustments and corrective actions that PSE has identified in Response Comments. Because the PLR did not consider Washington’s hybrid test year, it is necessary to consider all aspects of revenue requirement approved in Order 08 to ensure that the IRS consistency requirements are being satisfied in a comprehensive manner.

**III. To Comply with the PLR Consistency Requirements, the Commission Must Also Remove EOP Rate Base, EOP Depreciation Expense, and Pro Forma Capital Additions.**

In implementing the PLR standards, AWEC does not oppose PSE’s recommendation to use the historical protected-plus EDIT Amortization, which represents amounts accrued ratably over the period January 1, 2018, through December 31, 2018.

Under the consistency rule, a taxpayer is not allowed “to adjust its EDIT ARAM amortization annually without making similar adjustments to rate base, ADIT, book depreciation expense, and tax expense.”<sup>11/</sup> By definition, it is also true that a taxpayer is not allowed to make adjustments to ADIT, book depreciation expense, and tax expense, without making similar adjustments to protected-plus EDIT ARAM amortization. This, however, presents a problem when implementing PSE’s recommendation because, while PSE proposes using the unadjusted historical protected-plus EDIT amortization, adjustments were, in fact, made to the historical rate base, ADIT, book depreciation expense and tax expense amounts when arriving at the revenue requirement approved in Order 08.

While PSE proposes to use protected-plus EDIT accrued ratably over the period January 1, 2018, through December 31, 2018, none of the other revenue requirement items identified in the PLR were included in cost of service on that same basis. This is illustrated in Table 1, below, along with AWEC’s corrective proposal to address the PLR consistency requirements.

---

<sup>10/</sup> RCW 80.28.010 (1).

<sup>11/</sup> PLR at 8

**TABLE 1**  
Consistency Problem with PSE’s Proposed Corrective protected-plus EDIT Amortization to 2019 GRC Results

| Rev. Req. Item                                  | PSE's Proposal                      | AWEC Recommendation              |
|---|-------------------------------------|----------------------------------|
| Protected-plus EDIT Amortization (PSE proposed) | Jan. 1, 2018 - Dec. 31, 2018 AMA    | Jan. 1, 2018 - Dec. 31, 2018 AMA |
| Depreciation Expenses                           | Dec. 31, 2018 EOP + Pro Forma Adjs. | Jan. 1, 2018 - Dec. 31, 2018 AMA |
| Rate Base                                       | Dec. 31, 2018 EOP + Pro Forma Adjs. | Jan. 1, 2018 - Dec. 31, 2018 AMA |
| ADIT (incl. protected-plus EDIT)                | Dec. 31, 2018 EOP + Pro Forma Adjs. | Jan. 1, 2018 - Dec. 31, 2018 AMA |
| Tax Expense                                     | Dec. 31, 2018 EOP + Pro Forma Adjs. | Jan. 1, 2018 - Dec. 31, 2018 AMA |

Unlike the protected-plus EDIT amortization that PSE proposed in its Response Comments, the other revenue requirement items included in PSE’s cost of service in Order 08 were valued based on Dec. 31, 2018 EOP levels, plus additional post-test period adjustments into the pro forma period. Thus, PSE’s proposal, if approved, will result in an inconsistent revenue requirement calculation, in violation of the IRS consistency requirements.

In Order 08, the Commission stated: “We authorize recovery of the following pro forma capital additions through the period ending December 31, 2019: Advanced Metering Infrastructure, Get to Zero, Public Improvement, HR TOPS, High Molecular Weight Cable Replacement, and the Energy Management System. The Commission also adopts PSE’s proposal to value rate base on an End of Period (EOP) basis. Both of these measures address regulatory lag by modifying the test year to reflect actual rate base values and revenue requirement more closely during the rate effective period.”<sup>12/</sup>

To eliminate the possibility of a normalization violation in conjunction with PSE’s proposal, AWEC recommends that the Commission amend Order 08 to remove these EOP adjustments and pro forma adjustments. Doing so will result in a fully consistent revenue requirement calculation, including depreciation expenses, rate base, ADIT (including protected-plus EDIT) and tax expense, all measured over the same period of time. This proposal is summarized in Table 1 above, under the heading, “AWEC Recommendation.”

The impact of AWEC’s recommendation can be ascertained from Appendix A of the Commission’s Order 08. Tables 2 and 3, below, detail the annual impacts of AWEC’s recommendation for electric and gas services, respectively, relative to PSE’s proposed corrective actions.

---

<sup>12/</sup> Order 08 at 2.

**TABLE 2**

Electric Services, Impact of Removing Inconsistent Depreciation, Rate Base and ADIT Adjustments in Order 08, Annual Amount, Whole Dollars, Sufficiency / (Deficiency)

| <u>Adj. No.</u> | <u>Desc.</u>                   | <u>NOI</u>   | <u>Rate Base</u> | <u>Rev. Req.</u> |
|-----------------|--------------------------------|--------------|------------------|------------------|
| 6.18            | AMA to EOP Rate Base           | -            | 182,818,242      | 17,980,583       |
| 6.19            | AMA to EOP Depreciation        | (16,904,953) | (16,904,953)     | 20,835,871       |
| 6.29            | HR TOPS                        | (567,399)    | 5,798,358        | 1,325,423        |
| 7.09            | High Molecular Weight Cable    | (809,932)    | 34,322,392       | 4,453,609        |
| 7.10            | Energy Management System (EMS) | (2,484,594)  | 4,143,549        | 3,714,230        |
|                 | Total                          | (20,766,878) | 210,177,588      | 48,309,716       |

**TABLE 3**

Gas Services, Impact of Removing Inconsistent Depreciation, Rate Base and ADIT Adjustments in Order 08, Annual Amount, Whole Dollars, Sufficiency / (Deficiency)

| <u>Adj. No.</u> | <u>Desc.</u>            | <u>NOI</u>   | <u>Rate Base</u> | <u>Rev. Req.</u> |
|-----------------|-------------------------|--------------|------------------|------------------|
| 6.18            | AMA to EOP Rate Base    | -            | 150,665,688      | 14,764,937       |
| 6.19            | AMA to EOP Depreciation | (9,738,308)  | (9,738,308)      | 11,959,531       |
| 6.29            | HR TOPS                 | (289,829)    | 2,961,814        | 647,591          |
|                 | Total                   | (10,028,137) | 143,889,194      | 27,372,059       |

Thus, when implementing PSE's recommendations, AWEC recommends that the revenue requirement amounts identified in Tables 2 and 3 be applied as an offsetting reduction to base rate revenue requirement on a retrospective and going-forward basis. Since PSE filed the accounting petition regarding the PLR, this treatment will not violate retroactive ratemaking concerns.

Note that in arriving at the adjustments in Tables 2 and 3 above, AWEC has excluded the revenues associated with the AMI and Get to Zero pro forma adjustments, since AWEC's understanding is that those adjustments consisted mostly of previously deferred costs, rather than a standard pro forma adjustment. Notwithstanding, those adjustments may also be appropriately removed from revenue requirement for the purposes of achieving consistency if the Commission deems necessary.

The net impact of these recommendations, after incorporating PSE's protected-plus EDIT adjustments in PSE's Response Comments are identified in Table 4, below:

**TABLE 4**  
Impact of AWEC Proposed Consistency Adjustments on PSE proposal  
Annual Amount, Whole Dollars (Gas Services)

|   | <u>Electric</u> | <u>Gas</u>   | <u>Combined</u> |
|---|-----------------|--------------|-----------------|
| <b><u>Retroactive Adjustment as of October 1, 2021 - July 31, 2021 (10 months)*</u></b> |                 |              |                 |
| Add Jan. 1, 2018 - Dec. 1, 2018 EDIT (10 months)  | (28,208,286)    | (7,685,736)  | (35,894,022)    |
| Less: Actual Schedule 141X amortization (10 months)                                     | 45,627,406      | 11,632,411   | 57,259,817      |
| Retroactive EDIT Adjustment   | 17,419,120      | 3,946,675    | 21,365,795      |
| Remove EOP and Pro Forma Adjs. (10 months)  | (40,258,097)    | (22,810,049) | (63,068,146)    |
| Total Retroactive Rate Inc. / (Dec.)  | (22,838,977)    | (18,863,374) | (41,702,351)    |
| <b><u>Going Forward Adjustment</u></b>  |                 |              |                 |
| Add Jan. 1, 2018 - Dec. 1, 2018 EDIT  | (33,851,730)    | (8,267,017)  | (42,118,747)    |
| Less: Net Ordered EDIT Reversal Amount  | 54,502,395      | 12,989,956   | 67,492,351      |
| Going forward EDIT Adjustment   | 20,650,665      | 4,722,939    | 25,373,604      |
| Remove EOP and Pro Forma Adj.   | (48,309,716)    | (27,372,059) | (75,681,775)    |
| Total Going Forward Rate Inc. / (Dec.)  | (27,659,051)    | (22,649,120) | (50,308,171)    |
| * Through July, to be updated based on final refund date                                |                 |              |                 |

As can be seen from Table 4, achieving a fully consistent cost of service calculation in the 2019 GRC, results in rate reduction, not a rate increase as PSE proposes in its response comments. Achieving a consistent revenue requirement calculation would result in a collective revenue requirement reduction of \$50,308,171 on an annualized basis for both electric and gas services.

Table 4 also shows that, as a result of the inconsistent revenue requirement, PSE has over-collected by \$41,702,351 since rates were implemented in October 2020 through July 31, 2021. It would be necessary, however, for the Commission to update this amount based on the final date that new rates are implemented.

Thus, in conjunction with the accounting petition, and the request to amend Order 08, AWEC recommends that the amounts identified in Table 4 be returned to ratepayers through a rate reduction at the earliest available date. Further, AWEC recommends that the refund subject to the accounting petition be amortized immediately to Schedule 141X as PSE recommends, over a 15-month period.

Based on PSE's representation that it will be filing a new rate case soon, any further concerns with consistency can be addressed in the context of its future filings.

Finally, AWEC does not have the information to determine the impacts of this recommendation on the decoupling deferral; however, those impacts are appropriately considered in the context of a refund as PSE proposed in its recommendation.



**IV. The Commission Was Not Prohibited from Deferring the Interim Period Tax Reform Savings, Including Protected-Plus EDIT, So Long as the Consistency Requirements Are Met.**

Notably absent from the discussion in the PLR is the treatment of deferral associated with the cost-of-service benefits of tax reform that accrued over the Interim Period of January 1, 2018, and February 28, 2019. As noted in Table 9 of Exh. BGM-1T from Dockets UE-190529/UG-190530, over the Interim Period, PSE amortized protected-plus EDIT in the amount of \$27,034,601 for electric services and \$7,069,749 for gas services.

The primary purpose of the true-up mechanism that the Commission approved in Order 08 was to return the Interim Period deferred amounts to ratepayers, and irrespective of the PLR, allowing PSE to retain those amounts as a windfall for the benefit of shareholders is contrary to the public interest.

While the IRS found that revenue tracking of the protected-plus EDIT amortization benefits violated the normalization requirements, it did not conclude that a deferral of the Interim Period protected-plus EDIT amortization violated normalization requirements. In fact, nowhere in the PLR did the IRS discuss the deferral of protected-plus EDIT, as that was not identified in PSE's request.

Any deferral may be viewed as a departure from strict consistency because it is based on costs and benefits being viewed in isolation and that occur outside of the test period results. Accordingly, if deferring interim period protected-plus EDIT were to violate the consistency requirements, then every deferral involving rate base, depreciation expenses, and/or ADIT would result in a similar violation. This clearly was not the intent of the PLR, although little guidance has been provided on the deferral of protected-plus EDIT in the interim period.

While the IRS issued a rulemaking Notice 2019-33, which would have addressed the deferral of protected-plus EDIT in the interim period, to date no rules or guidance have been issued pursuant to that notice. This is unfortunate because, unlike the PLR, the rulemaking process would afford a broader perspective, rather than the narrow questions in the PLR request.

AWEC supported a protected-plus EDIT revenue tracking approach because it allowed ratepayers to recognize the benefits of deferred protected-plus EDIT in the Interim Period, but ensured that PSE was required to return no more than the protected-plus EDIT that it accrued over any particular period of time. From AWEC's perspective, this treatment was to PSE's benefit. Based on the protected-plus EDIT amortization implemented in the 2018 expedited rate filing, over the period March 1, 2019, through March 31, 2020, PSE would have refunded more protected-plus EDIT in rates than it accrued over that same period. As detailed in Exh. BGM-7 from Dockets UE-190529/UG-190530, over that period PSE returned \$25,881,499 of protected-plus EDIT amortization to ratepayers. Notwithstanding, the protected-plus EDIT accruals over that period only amounted to \$23,187,581. Thus, returning the interim period tax savings through a revenue tracking mechanism ensured that PSE would not return more than it amortized on a going-forward basis.

AWEC, however, accepts the IRS ruling that it is not consistent with the normalization requirements to true up the protected-plus EDIT based on volumetric variances.<sup>13/</sup> Notwithstanding, the ruling does not provide any guidance on how to handle the Interim Period protected-plus EDIT amortization of \$27,034,601 for electric services and \$7,069,749 for gas services.

Those amounts were clearly being deferred, and as long as the consistency requirements are met with respect to the deferral, the deferred amortization does not violate the normalization requirements. PSE did, for example, pass back the deferred tax expense savings over that same period, without resulting in a consistency violation.

PSE originally lowered its tax expenses to reflect the reduction in the federal income tax rate from 35% to 21% in Docket No. UE-180282 Cons., effective March 1, 2018.<sup>14/</sup> When the income tax expense savings were implemented in rates, PSE did not assert that it was entitled to retain the protected-plus EDIT amortization benefits during the Interim Period, as it did subsequently. To the contrary, PSE asserted that the protected-plus EDIT benefits in the Interim Period were being deferred and would be addressed in a later filing:

“This filing does not address excess deferred taxes or the deferred balance associated with the over collection of income tax expense for the period January 1 through April 30, 2018. PSE proposes that both the excess deferred taxes and the deferred balance associated with the over collection of income tax expense be addressed in PSE’s accounting petition in Dockets UE-171225 and UG-171226.”<sup>15/</sup>

Later, in PSE’s 2018 Expedited Rate Filing, the Commission, as a condition of approving the settlement, affirmatively required PSE to return the income tax expense savings accrued over the period January 1, 2018 through April 30, 2018.<sup>16/</sup> In that proceeding, the Commission acknowledged that parties were “unable to agree on the accounting and proper ratemaking treatment of interim protected-plus EDIT reversals that occurred between January 1, 2018, and February 28, 2019.”<sup>17/</sup> PSE and parties agreed, however, “that the disposition of those reversals and the proper ratemaking treatment thereof will be addressed in PSE’s next general rate case.”<sup>18/</sup>

On January 8, 2018, the Commission issued a press release stating that it had “directed regulated companies to track federal tax savings resulting from the federal Tax Cuts and Jobs Act to ensure those savings will benefit utility customers.” The Commission advised that

---

<sup>13/</sup> PLR at 8.

<sup>14/</sup> See UE-180282 Cons., Open Meeting Memo at 2 (Apr. 26, 2018).

<sup>15/</sup> UE-180282, PSE Advice No. 2018-20 at 3 (Mar. 30, 2018).

<sup>16/</sup> UE-180899, Order 05 ¶ 35 (Feb. 21, 2019).

<sup>17/</sup> *Id.* ¶ 31.

<sup>18/</sup> UE-180899, Order 05, Settlement Agreement ¶ 14.

“utilities are on notice that we expect customers will reap the benefits.”<sup>19/</sup> Unfortunately, if PSE’s proposal is approved, that will not happen in this case; customers will not reap the benefit of protected-plus EDIT amortization in the Interim period.

AWEC continues to recommend that ratepayers be provided with the benefit of deferred protected-plus EDIT over the Interim Period, albeit without dollar-for-dollar tracking of the underlying revenues. Providing shareholders a windfall for the Interim Period protected-plus EDIT amounts is not in the public interest. AWEC believes that a solution can be developed to provide ratepayers with these benefits, while ensuring consistency through appropriate rate base adjustments. Other utilities were able to develop solutions with respect to interim period protected-plus EDIT amortization without violating the consistency requirements, and if PSE had spent as much theoretical effort developing ways to return those monies to rate payers as it has to demonstrate that the monies are the windfall benefit of shareholders, perhaps it could have done the same.

AWEC recommends that the Commission continue to defer the Interim Period protected-plus EDIT amortization for consideration in PSE’s next general rate case, where methods to return those funds to ratepayers, without violating the consistency requirements, can be evaluated more fully.

#### **V. Amending the Order 08 Presents Procedural Concerns**

While AWEC does not oppose amending the Commission’s final order pursuant to the PLR, it presents procedural challenges. AWEC believes it is reasonable for the Commission to take administrative notice of the PLR. Under WAC 480-07-495(2)(c), if administrative notice is granted, however, “[t]he presiding officer will afford parties an opportunity to contest facts and material of which the commission takes official notice.”

Contesting facts and material of which the Commission takes official notice is challenging in the context of a notice and comment procedure. AWEC therefore requests that these comments be included in the evidentiary record and considered in the Commission’s final decision to amend Order 08. Additionally, to the extent factual disputes arise as a consequence of PSE’s and party comments, the Commission should reopen the record to receive additional evidence on these issues.

#### **VI. Conclusion**

AWEC appreciates the opportunity to provide comments in this matter. To summarize, AWEC recommends that a consistency adjustment be applied not just to protected-plus EDIT, but also to other aspects of revenue requirement to ensure that they are each stated on the same basis. This includes removing adjustments to EOP rate base, EOP depreciation expense, and the pro forma adjustments identified in Tables 2 and 3, above.

---

<sup>19/</sup> Commission Press Release (Jan. 8, 2018).

Mark L. Johnson, Executive Director and Secretary

Page 12 of 12

September 10, 2021

AWEC also believes that a deferral of protected-plus EDIT during the interim period does not violate the normalization requirements, and requests that those amounts continue to be deferred until PSE's next general rate case.

Finally, to the extent factual disputes arise from the comments filed in response to the Commission's Notice, AWEC requests that the Commission reopen the record to receive evidence on these matters.

Dated this 10<sup>th</sup> day of September 2021.

Sincerely,

/s/ Bradley G. Mullins

Bradley G. Mullins

MW Analytics Energy and

Utility Consulting

Vihiluoto 15

Kempele FI-90440, Finland

brmullins@mwanalytics.com

Consultant for AWEC